

8 AAC is amended to read:

Chapter 57. Appeals.

Section

- 10. Appeals to the Workers' Compensation Appeals Commission
- 20. Parties to the appeal
- 30. Intervention and request for ruling by the director
- 40. Filing and service
- 50. Facsimile or electronic filing and service
- 60. Time computation
- 65. Attorney Representation.**
- 70. Filing a notice of appeal
- 72. Timing of motion for extraordinary review
- 74. Motions and consideration of extraordinary review
- 76. Commission consideration of motion for extraordinary review
- 80. Panel to hear appeal
- 90. Exemption from payment of filing fee and costs - determination of indigency
- 100. Application for stay of compensation order payments
- 110. Record on appeal
- 120. Transcript
- 130. Briefing schedule and filing
- 140. Motion for extension of time
- 150. Content and form of briefs and memoranda
- 160. Amicus brief
- 170. Duty to prepare excerpt of record
- 180. Contents of excerpt of record
- 190. Evidence
- 200. Oral argument
- 210. Motions
- 220. Final commission decision
- 230. Reconsideration
- 235. Clerk of the Workers' Compensation Appeals Commission**
- 240. Dismissal of cases
- 250. Dismissal for failure to prosecute
- 260. Motion for attorney fees and costs
- 270. Relaxation of rules
- 990. Definitions

8 AAC 57.040 is repealed and readopted to read:

8 AAC 57.040. Filing and service. (a) Papers may be filed with the commission by delivery, by first class United States mail, or, as provided in 8 AAC 57.050, by facsimile transmission or electronic mail. Papers will be filed in the commission's office as of the date of receipt. Documents transmitted by facsimile transmission or electronic mail are filed as provided in 8 AAC 57.050.

(b) Copies of papers filed in the appeal must be served on all parties except appellees who have filed a notice of nonparticipation under 8 AAC 57.020(c).

(c) Service upon a party represented by an attorney is upon the attorney unless the chair, panel, or commission orders service upon the party, as well as upon the attorney.

(d) Service upon the attorney or upon a party is made

(1) by delivering a copy to the attorney or party;

(2) by mailing a copy, by first class United States mail, to the attorney's or party's last known mailing address; or

(3) if consented to by the receiving attorney or the receiving party, by facsimile transmission or electronic mail, as provided in 8 AAC 57.050.

(e) For purposes of (d)(1) of this section, delivery of a copy is achieved

(1) by handing it to the attorney or to the party or leaving it at the attorney's or party's office with the person in charge;

(2) if there is no one in charge as described in (1) of this subsection, by leaving it in a conspicuous place at the attorney's or party's office; or

(3) if the party's office is closed or the person to be served does not have an office, by leaving it at the party's dwelling with a person 18 years of age or older.

(f) If papers are served on a party by first class United States mail, the date of mailing, as shown by the postmark or other proof from the United States Postal Service, is the date of service. A postmark date from a privately owned and controlled postage meter is not sufficient to prove the date of mailing, and papers postmarked in this manner are considered served on the date of receipt by the party.

(g) Proof of service must

- (1) state the name of each person who has been served;
- (2) show the day and manner of service; and
- (3) be made promptly, and filed with the commission before action is to be taken by the commission on the paper served.

(h) Proof of service may be by

- (1) written acknowledgment of service;
- (2) certificate of an attorney, an authorized agent of the attorney, or a pro se litigant;
- (3) affidavit of the person who served the papers; or
- (4) any other proof satisfactory to the commission. (Eff. 12/5/2005,

Register 176; am 4/21/2006, Register178; am __/__/__, Register __)

Authority: AS 23.30.008

AS 23.30.128

8 AAC 57.050 is repealed and readopted to read:

8 AAC 57.050. Facsimile or electronic mail filing and service. (a) A party may file a document with the commission

(1) by facsimile transmission, if the transmitted document is 40 pages or less in length;

(2) by electronic mail, if the transmitted document is 40 pages or less in length and is attached in portable document format to an electronic mail message that contains only the addresses of the sender and recipient and the title of the document; and

(3) the original document is sent by United States mail to the commission upon request. If an affidavit bearing the original signature of the affiant is filed by facsimile or electronic mail, the original affidavit must be mailed to the commission the same day it is transmitted to the commission by facsimile or electronic mail.

(b) A party may serve a document on another party

(1) by facsimile transmission or electronic mail, if the party being served has filed and served on the commission and the parties a notice of consent; if the party being served consents to service by

(A) facsimile transmission, the notice of consent must include the receiving party's facsimile number;

(B) electronic mail, the notice of consent must include an electronic mail address for the receiving party and a statement by the receiving party that the electronic mail client server will not reject transmitted documents because of size; and

(2) by facsimile transmission or electronic mail, if a paper copy of the document is sent by first class United States mail to the party upon request.

(c) Service or filing by

(1) facsimile transmission is complete upon receipt of the entire document by the recipient's facsimile machine;

(2) electronic mail is complete upon transmission of the document to the commission's electronic mail address, or to a party's electronic mail address as indicated on the party's notice of consent under (b)(1)(B) of this section, as appropriate; and

(3) facsimile transmission or electronic mail that is sent after 5:00 p.m. Alaska time is deemed to have occurred at the opening of business on the next day that is not a Saturday, Sunday, or a legal holiday.

(d) If a party transmits a harmful computer program,

(1) a party's notice of consent under (b)(1)(B) of this section is automatically revoked; and

(2) the transmitting party may not file papers with the commission by electronic mail.

(e) Proof of service or filing by facsimile or electronic mail may be by a means described in 8 AAC 57.040(h) and shall be sent by first class United States mail to the commission and parties. Proof of service must include

(1) the date and time of the transmission;

(2) the number of pages transmitted;

(3) the transmitting facsimile machine telephone number, if service is by facsimile transmission;

(4) the recipient's name and facsimile machine telephone number, if service is by facsimile transmission;

(5) the sending and receiving addresses and the electronic format in which the document was sent, if service is by electronic mail; and

(6) a statement that the document was transmitted by facsimile transmission or electronic mail and the person signing the affidavit believes the transmission to have been completed without error. (Eff. 12/5/2005, Register 176; am __/__/__, Register __)

Authority: AS 23.30.008

AS 23.30.128

The editor's note following 8 AAC 57.050 is changed to read:

Editor's Note: The commission's office is located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska 99501. The commission's telephone number is (907) 269-6738; the commission's facsimile number is (907) 269-6737 and the commission's

website is located at: www.labor.alaska.gov/WCcomm/home.htm

[WWW.LABOR.STATE.AK.US/WCCOMM/HOME.HTM].

8 AAC 57 is amended by adding a new section to read:

8 AAC 57.065. Attorney representation. (a) A party to an appeal or other proceeding in the commission may proceed in person or by attorney, except that

(1) a corporation must proceed by an attorney admitted to practice law in the state of Alaska;

(2) a partnership or other unincorporated association must proceed as provided by law.

(b) An appeal or motion for extraordinary review filed by a person who is not an attorney on behalf of a party that is required to proceed by attorney will be dismissed as provided in 8 AAC 57.250 for failure to comply with subsection (a) unless

(1) the appeal or motion for extraordinary review was filed by the person who represented the party before the board;

(2) the commission clerk notifies the person who filed the appeal or motion for extraordinary review in writing that subsection (a) requires the party to proceed by attorney and that the matter will be dismissed if the party fails to comply with subsection (a) within 30 days; and

(3) an attorney admitted to practice law in the State of Alaska files an entry of appearance on behalf of the party within 30 days of the mailing of the clerk's notice under (2) of this subsection.

(c) a party who proceeds in person shall sign all documents the party files in the commission. A party who proceeds in person may not be assisted in a matter before the commission by a person who is not an attorney except as permitted by order of the chair or panel or commission.

(d) A party who proceeds in person will be identified as pro se or self-represented. (Eff. __/__/__, Register __)

Authority: AS 22.20.440(A)(2) AS 23.30.008 AS 23.30.127

8 AAC 57.070(a) is amended to read:

(a) **An appeal is initiated by filing with the commission a notice of appeal signed by the appellant or if the appellant is represented by counsel, the attorney representing the appellant.** In addition to specifying in the notice of appeal the board decision or order appealed from and including a statement of the grounds upon which the appeal is taken, as required in AS 23.30.127(b), a party filing a notice of appeal must file with the notice of appeal

(1) a list of the **name** [NAMES], current mailing **address** [ADDRESSES], and telephone and facsimile numbers of **each appellant** [THE PARTIES] taking the appeal;

(2) a list of the **name** [NAMES], current mailing **address** [ADDRESSES], and telephone and facsimile numbers of counsel, **if an appellant taking the appeal is** [IF THE PARTIES ARE] represented by counsel;

(3) unless the appellant is the state or a political subdivision of the state, a filing fee of \$50 or a completed *Financial Statement Affidavit*, as adopted by reference in 8 AAC 57.090; the fee may be paid by cash, money order, or certified, traveler's, cashier's, or personal check;

(4) the designation required in 8 AAC 57.120(a) of the parts of the board's hearing record that appellant intends to transcribe; and

(5) proof of service upon the **other** parties and the director. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am __/__/__, Register __)

Authority: AS 23.30.007 AS 23.30.008 AS 23.30.127

8 AAC 57.070 is amended by adding a new subsection to read:

(c) Within 15 days after service of the notice of appeal each appellee must file

(1) a list of the name, current mailing address, and telephone and facsimile numbers of each appellee; and

(2) a list of the name, current mailing address, and telephone and facsimile numbers of counsel if the appellee is represented by counsel. (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am __/__/__, Register __)

Authority: AS 23.30.007 AS 23.30.008 AS 23.30.127

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8 AAC 57.072(a)(1) is amended to read:

(1) within 10 days after the date [OF SERVICE OF THE BOARD] **the** order or decision from which review is sought **was filed in the office of the board**; and (Eff. 12/5/2005, Register 176; am __/__/__, Register __)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

AS 23.30.125

8 AAC 57.074(a)(1) and (2) are amended to read:

(a) A motion or cross-motion for extraordinary review may not exceed 15 pages in length, exclusive of appendices, and must include

(1) **a list of** the name, current mailing address, and telephone and facsimile numbers of **each** [THE] party filing the motion;

(2) **a list of the name** [THE NAMES], current mailing **address** [ADDRESSES], and telephone and facsimile numbers of counsel, if **the party filing the motion is** [THE PARTIES ARE] represented by counsel;

(Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am __/__/__, Register __)

Authority: AS 23.30.008 AS 23.30.127 AS 23.30.128

AS 23.30.125

The editor's note following section 8 AAC 57.090 is changed to read:

Editor's Note: The Workers' Compensation Appeals Commission *Financial Statement Affidavit*, adopted by reference in 8 AAC 57.090, may be obtained from the commission's office, located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska

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99501 or through the commission's website at:

www.labor.alaska.gov/WCcomm/home.htm

[WWW.LABOR.STATE.AK.US/WCCOMM/HOME.HTM].

8 AAC 57.120(h) is amended to read:

(h) Transcripts must be in the form and format prescribed in the Alaska Court System's *Manual of Transcript Procedures*, **June 2007** [May 1997], adopted by reference. (Eff. 12/5/2005, Register 176)

Authority: AS 23.30.008 AS 23.30.127

The editor's note following 8 AAC 57.120 is amended to read:

Editor's note: The Alaska Court System's *Manual of Transcript Procedures*, **June 2007** [May 1997], adopted by reference in 8 AAC 57.120, is available from the Alaska Court System website, at

<http://www.courts.alaska.gov/trialcts.htm#trans>

[HTTP://WWW.STATE.AK.US/COURTS/HOME.HTM], from the Alaska Court System, Customer Service, located at 825 West 4th Avenue, Anchorage Alaska 99501-2004, telephone number: (907) 264-0450, or from the commission's office, located at 1016 W. 6th Ave., Suite 405, Anchorage, Alaska 99501; telephone number (907) 269-6738.

8 AAC 57.210(b) is amended to read:

(b) A memorandum supporting a motion filed with the commission must be in the form required in 8 AAC 57.150(a) and (b). The memorandum must include

- (1) a brief, complete statement of the reasons in support of the motion;
- (2) an affidavit if the facts relating to the motion are not otherwise

proven;

- (3) the points and authorities on which the moving party relies; and

(4) **a concise statement of the relief sought** [AN APPROPRIATE ORDER FOR EXECUTION BY THE PANEL SHOULD THE MOTION BE GRANTED].

(Eff. 12/5/2005, Register 176; am __/__/__, Register __)

Authority: AS 23.30.008

AS 23.30.127

AS 23.30.128

8 AAC 57.210(c) is amended to read:

(c) The original of a motion and response must be filed with the commission, together with proof of service on all other parties **and the director unless the director has filed a notice of nonintervention.**

8 AAC 57 is amended by adding a new section to read:

8 AAC 57.235. Clerk of the Workers' Compensation Appeals

Commission. (a) The clerk is appointed by the chair of the workers' compensation appeals commission. The clerk shall be qualified to hold appointment as a Notary

Public in the State of Alaska. The clerk shall occupy the position of Law Office Assistant II in the classified employee service.

(b) The clerk shall, upon entering office, take and subscribe to the oath or affirmation required by state law.

(c) The clerk may not permit any original record of the commission, on paper or electronic media, to be taken from the commission's office, except as required by order of the chair or this chapter. The clerk shall maintain the record on appeal transmitted from the board in the commission office during the pendency of the appeal, unless the chair orders the record returned to the board

(1) for board consideration of a settlement or other action that may moot the appeal;

(2) for not more than 14 days to allow a party to the appeal to consult the record in Fairbanks or Juneau; or,

(3) for other reasons to advance the prompt, fair, and orderly disposition of the appeal.

(d) Unless otherwise ordered by the chair, the clerk shall return the record intact to the board within 45 days of the commission's final disposition of the appeal. If a party appeals the commission's decision to the Supreme Court, the clerk shall prepare a copy of the entire record on appeal, including the board and the commission records, and transmit a complete, bound, administrative record on appeal to the Clerk of the Appellate Courts.

(e) When a proceeding is initiated in the commission, the clerk will prepare a docket notice setting out the caption and number assigned to the proceeding and notifying the parties of the documents filed. In the docket notice, the clerk will notify the party filing a notice of appeal or a motion for extraordinary review of a failure to comply with the requirements of this chapter, specify the deficiency, and provide time to the party to remedy the deficiency. Except as otherwise ordered by the commission, panel, or chair, no action will be taken by the commission, panel or chair until the time provided by the clerk has passed. If the deficiency is not remedied within the time provided, the clerk will notify the chair and the parties to the proceeding that the party has failed to remedy a deficiency.

(f) The clerk will send a copy of a notice of appeal and docket notice to the board and request the board to submit a list of names and addresses of all counsel, and all unrepresented parties, who appeared before the board in the proceeding that resulted in the board decision appealed to the commission within ten days of the request. The clerk will notify the board of the date by which the record on appeal is due under 8 AAC 57.110.

(g) The clerk will publish all final or memorandum decisions of the commission and all other orders that the chair, panel, or commission shall require to be published. The clerk will certify that the published decision or order is the full text of the decision or order issued by the commission, noting if changes in format were made for publication or minor typographical errors were corrected.

(h) The clerk will preserve copies of the recordings of commission hearings, and make copies of the recordings as requested by a party.

(i) When the commission panel has conditioned a stay of a board order pending appeal upon the filing of a supersedeas bond, the clerk may accept the bond as ordered by the commission panel. Unless otherwise ordered by the chair, the clerk will return the bond to the party required to file the bond within 14 days of the final disposition of the appeal, and notify the parties that the bond has been returned.

(Eff. __/__/__, Register _____)

Authority: AS 23.30.008 AS 23.30.009

8 AAC 57.900 is amended to read by adding a new paragraph to read:

(12) “clerk” means the clerk of the Workers’ Compensation Appeals Commission as provided by AS 23.30.009(a)(1). (Eff. 12/5/2005, Register 176; am 4/21/2006, Register 178; am __/__/__, Register ____)

Authority: AS 23.30.007 AS 23.30.125 AS 23.30.128
AS 23.30.008 AS 23.30.127 AS 23.30.395
AS 23.30.009